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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,694	10/13/2005	Thomas Gschwind	240102.402USPC	6923

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 5400  
SEATTLE, WA 98104

EXAMINER
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MCAHON, MARGUERITE J

ART UNIT	PAPER NUMBER
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3747

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/519,694	GSCHWIND ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marguerite J. McMahon	3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS; WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 3, 19, 21, 23, 24, 26, 28-32, 34-36, 43, 45 and 47 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-52 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 13-18, 20, 22, 25, 27, 33, 37-42, 44, 46 and 48 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                           |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 21, 23, 26, 28-32, 34-36, 43, and 47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/30/06.

Claims 3, 19, 24, and 45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant argued that these claims should be included in the elected Species. However, the recess 11 cited in claim 3 is shown in Figure 1, but not in the elected Species. The portion of the outer wall contiguous to the well being thicker with respect to the surrounding regions cited in claim 19 is shown in Figure 1, not in the Species shown in Figures 14-16. The well wall comprising a partition 30 dividing the inner space cited in claim 24 is shown in Figure 13, not in the Species shown in Figures 14-16. The method further comprising clamping a holding device firmly to the outer wall, cited in claim 45, is shown as the clamping section 10 clamped to the outer wall 14, shown in Figure 1, not in the Species of Figure 14-16.

### ***Claim Rejections - 35 USC § 112***

Claims 2, 41, 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

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invention. The elastic clamping section at least partially contiguous to an outer wall of the fluid line is shown in Figure 1, and is described clearly in the Specification with respect to that species. However, this feature is not clearly described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention in the Species shown in Figures 14-16. In addition, the holding device being held by repeated positive locking on the fluid line (claims 41) and the clamping section being latched into the well on the fluid line in the insertion direction of the projection are not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 17-38, 41, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 17, the claim cites a well configured to receive a holding device, which is not what is shown, and is confusing. With respect to claim 20, the wall opening being substantially radially parallel to the tubular line section does not make sense in the given context. With respect to claim 41, the holding device being held by repeated positive locking on the fluid line" does not make sense in the given context. With respect to claim 42, a clamping section being latched into the well on the fluid line in the insertion direction of the projection does not make sense in the given context.

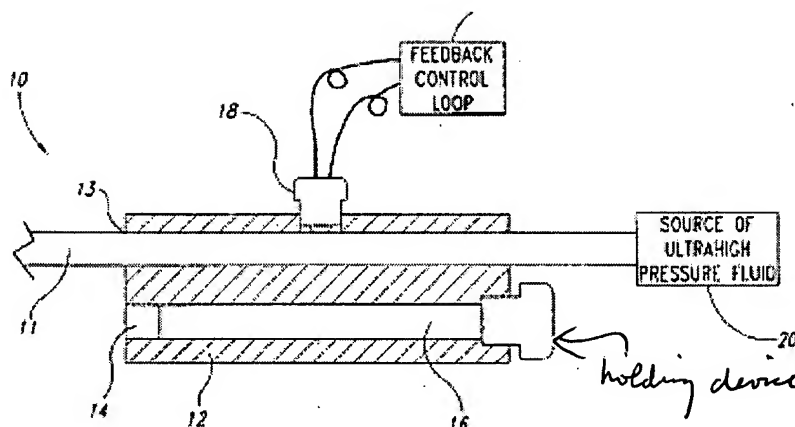
***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-7, 13-18, 20, 22, 25, 33, 37, 39-42, 44, and 46, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (6,442,341) in view of Raghavan et al (6,904,459). Note a heating device for a fluid line having an inner space 3 configured to communicate fluid flow comprising: a heating element 41; and a heater 4, which is radially parallel to the tubular line section, adapted to receive the heating element 41 and be inserted in a well 21 in the fluid line, wherein a well wall of the fluid line is contiguous to an inner space of the fluid, and wherein the well wall extends into the inner space of the fluid line via rib plates 31. Wu shows everything except a holding device fabricated from an electrically insulating material, adapted to couple the heating element to the fluid line, presassembling the heating device prior to mounting it on the fluid line, and forming the device as a kit.

Raghavan et al teach that it is old in the art to provide a holding device, adapted to couple the heating element to the fluid line. See the Figure shown on next page:



It would have been obvious to one having ordinary skill in the art to modify Wu by providing a holding device, adapted to couple the heater to the fluid line, in order to firmly secure the heating device to the fluid line. The heater 4, in this modified form becomes a projection, which is defined as any solid convex shape that just out from something. Raghavan et al is silent as to whether or not the holder is formed of an electrically insulating material. However, it would have been within the purview of one having ordinary skill in the art to form the holder of an electrically insulating material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Note, with respect to claims 4 and 46, that it would be inherent or at the very least conventional to preassemble the heating element prior to mounting it on the fluid line.

In addition, it would have been obvious to one having ordinary skill in the art to form the device as a kit, since the device would function in the same way whether or not it was considered to be a kit.

Claims 38 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (6,442,341) in view of Raghavan et al (6,904,459) as applied to claims 1, 4-7, 13-18, 22, 25, 33, 37, 39, 40-42, 44, and 46 above, and further in view of Topfer (4,922,882). Wu in view of Raghavan et al show everything except the fluid line formed as a valve, and the fluid line being utilized in a crankcase venting system of an internal combustion engine. Topfer shows that it is old in the art to provide heating for a fluid line formed as a valve body 6, which is utilized in a crankcase venting system of an internal combustion engine. It would have been obvious to one having ordinary skill in the art to utilize the device of Wu in view of Raghavan et al in to heat a valve body in a crankcase venting system of an internal combustion engine, in order to provide improved heat transfer and temperature control.

#### ***Allowable Subject Matter***

Claims 2 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 49-52 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 2/24/07 have been fully considered but they are not persuasive. Applicant argues that Wu fails to disclose a projection adapted to receive a

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heating element because the PCT heat generator of Wu is not a projection, nor is it received in a projection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is the combination of the two references which makes the heater a projection, since the heater 4 shown by Wu projects from the holder shown by Raghavan et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 571-272-4848. The examiner can normally be reached on Monday-Wednesday and Friday, 10am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Marguerite McMahon  
Primary Examiner  
Art Unit 3747